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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **16th** day of August, 1999

Served August 16, 1999

Complaints of

**Franz Soni
Paul Tobin and Angelo Bianco
And
Gerard M. Kelly
v.
Continental Airlines, Inc.**

**Alleging Violations of 49 U.S.C. § 41705 and
14 CFR Part 382**

**Dockets OST 97-3287 - 9
 OST 98-3623 - 3
 OST 98-4504 - 3**

Continental Airlines, Inc.

**Violations of 14 CFR Part 382, and
49 U.S.C. §§ 41310, 41702, and 41705
Enforcement Proceeding**

Docket OST 99-6111 - /

**NOTICE OF ENFORCEMENT PROCEEDING AND
PROPOSED ASSESSEMENT OF CIVIL PENALTIES**

The attached complaint of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings alleges that Continental Airlines, Inc. (Continental), violated a number of the requirements of 14 **CFR** Part 382 the Department's rule that implements the Air Carrier Access Act (49 U.S.C. § 41705) and prohibits discriminatory treatment of the disabled in **air** transportation. To the extent that these violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation. To the extent the violations occurred in foreign air transportation, the incidents also represent violations of 49 U.S.C.

5 41310, which in part prohibits air carriers and foreign air carriers from unreasonably discriminating against any person in foreign air transportation.

In 1997 and 1998 three formal complaints were filed with the Department under 14 CFR 302.201 alleging violations of the cited statute and regulation. The complaints state, as their principal allegation, that the carrier failed to meet two requirements of Part 382, the requirement to provide prompt, attentive wheelchair and boarding chair service, and the requirement to stow the assistive devices of disabled travelers in the cabin area in certain circumstances. Section 382.39(a) requires that carriers provide wheelchair assistance to disabled persons, with the associated obligation to perform this service competently and promptly. When such service is performed, moreover, section 382.39(a)(3) states that no passenger may be left unattended in a wheelchair for more than 30 minutes. The complaints, taken together, allege that on one or more occasions the carrier provided wheelchair or boarding chair assistance that was tardy or negligent, and that on two occasions the carrier failed to stow the complainants' wheelchairs in the cabin area, as required under 14 CFR 382.41, and insisted on placing them in the cargo compartment.

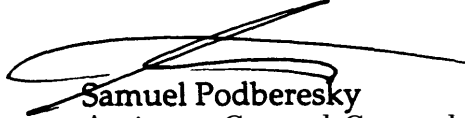
The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office), in view of these formal complaints, conducted an informal investigation of Continental's compliance with Part 382, limited to those portions of the rule relating to wheelchair service and stowage of assistive devices, both subjects of the formal complaints. Our survey of complaints received by the carrier itself and of complaints submitted to the Department directly by consumers revealed several additional instances of apparent violations of 14 CFR 382.39, but no additional violations of 14 CFR 382.41. In addition, we noted several instances in both the correspondence files provided by Continental in connection with this investigation and in connection with other cases antedating our inquiry, where the carrier had failed to provide full dispositive responses to written complaints it received from disabled air travelers as required by 14 CFR 382.65.

Based on the formal complaints referred to above and the investigation undertaken by the Enforcement Office, there are reasonable grounds, in my opinion, to believe that Continental has violated provisions of 14 **CFR** Part 382 and that an investigation of the alleged violations is in the public interest. Accordingly, pursuant to Rule 206 of the Department's Rules of Practice, 14 CFR 302.206, I institute a formal enforcement proceeding to investigate the allegations set forth in the attached complaint.

Under 49 U.S.C. § 46301 and 14 CFR Part 383, Continental may be assessed civil penalties of up to \$1,100 for each violation of the federal aviation statutes, or Department regulations or orders. The Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in the enforcement proceeding instituted by this notice. Under Rule 206a of the Department's Rules of Practice, 14 **CFR 302.206a**, Continental is notified that it may be liable for civil penalties of \$250,000, reflecting violations of 49 U.S.C. § 41705, 49 U.S.C. § 41702, and 49 U.S.C. § 41310, and 14 **CFR 382.39**, 14 **CFR 382.41**, and 14 CFR 382.65. We are also notifying the carrier that it may be liable for an additional

penalty of \$1,100 for each additional violation of these statutory and regulatory provisions substantiated in the course of this proceeding

This notice and the attached complaint will be served on Continental. Under Rules 206a and 207 of the Department's Rules of Practice, 14 CFR 302.206a and 207, Continental is required to file, within 15 days, an answer to the complaint admitting or denying specifically and in detail each allegation of the complaint and a response to the proposed assessment of civil penalties, specifically presenting any matters the respondent intends to rely on in opposition to or in mitigation of such civil penalties.

A handwritten signature in black ink, appearing to read 'Samuel Podberesky', with a large, sweeping flourish extending to the right.

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings


(SEAL)

CERTIFICATE OF SERVICE

I certify that on August **16**, 1999 , I served the foregoing Notice of Enforcement Proceeding and Proposed Assessment of Civil Penalties and the related Complaint on the Respondent by first class mail addressed to Counsel for the Respondent and to the Respondent's address in Houston, Texas, and Counsel for the Complainants in the captioned formal complaints.

Rosalind A. Knapp
Deputy General Counsel

By:



Nicholas Lowry
Attorney
Office of Aviation Enforcement
and Proceedings
(202) 366-9351

Service List

Office of Hearings
U.S. Dept. of Transportation
Rm. 5411E
400 7th St. S.W.
Washington, D.C. 20590

Jeffrey Smisek, Esq.
Executive Vice President and General Counsel
Continental Airlines, Inc.
41st Floor, HQSLG
1600 Smith Street
Houston, Texas 77002

Carson S. Trapnell, Esq.
Continental Airlines, Inc.
41st Floor, HQSLG
1600 Smith Street
Houston, Texas 77002

Leonard Ceruzzi, Esq.
Regulatory Counsel
Continental Airlines
1300 I St., N.W.
Washington, D.C. 20005

Kleo J. King, Esq.
Eastern Paralyzed Veterans **Asso.**
75-20 Astoria Blvd.
Jackson Heights, NY 11370-1 177

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D. C.**

Served August 16, 1999

Complaints of

**Franz Soni
Paul Tobin and Angelo Bianco
And
Gerard M. Kelly
v.
Continental Airlines, Inc.**

**Alleging Violations of 49 U.S.C. § 41705 and
14 CFR Part 382**

**Dockets OST 97-3287
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Continental Airlines, Inc.

**Violations of 14 CFR Part 382, and
49 U.S.C. §§ 41310, 41702, and 41705
Enforcement Proceeding**

Docket OST

ENFORCEMENT COMPLAINT

1. Continental Airlines (Continental), holds certificate authority under 49 U.S.C. § 41101 to engage in air transportation of passengers and cargo. Continental's principal office is located at 2929 Allen Parkway, Houston, Texas • 77019.
2. As a certificated air carrier, Continental is required to comply with the Air Carrier Access Act, 49 U.S.C. § 41705, and 14 CFR Part 382, the Department's rule that implements 49 U.S.C. § 41705 and prohibits discriminatory treatment of the disabled in air transportation.

3. As a certificated air carrier, Continental is subject to the requirements of 49 U.S.C. § 41702 which requires that air carriers provide safe and adequate interstate air transportation.
4. As a certificated air carrier, Continental is subject to the requirements of 49 U.S.C. § 41310 which in part prohibits air carriers and foreign air carriers from unreasonably discriminating against any person in foreign air transportation.
5. Three formal complaints, styled *Franz Soni v. Continental Airlines* (Dkt. OST-97-3287); *Paul Tobin and Angelo Bianco v. Continental Airlines* (Dkt. OST-98-3623) and *Gerard Kelly v. Continental* (Dkt. OST 98-4504), have been filed under 14 CFR 302.200 alleging a number of violations of 49 U.S.C. § 41705 and 14 CFR Part 382.
6. Mr. **Soni** alleges (Dkt. OST-97-3287): (a) that a boarding chair was not promptly made available on his August 2, 1997, flight from Newark to Tampa, as required by section 382.39(a)(l); (b) that on the same flight, the carrier failed to stow his wheelchair in the cabin area on an aircraft that had a suitable stowage area in violation of section 382.41(e)(2); (c) that, on his August 5 return flight, he was not provided a seat with a **moveable** armrest and that attendants, in lifting him to the aisle chair, failed to exercise sufficient care and caused him to suffer a bruise; and (d) that on a third flight, a November 9 flight from Tampa to Newark, he was given a seat that did not have a functioning **moveable** armrest and that he received a bump when he was negligently transferred to a boarding chair at Newark. These incidents, according to the complaint, demonstrate a pattern of discrimination against disabled travelers and constitute violations of 49 U.S.C. § 41705 and 14 CFR Part 382.
7. Mr. **Tobin** (in his joint complaint with Mr. Bianco, Dkt. OST-98-3623) claims that he was carelessly transferred to an aisle chair, and suffered minor bruises as a result, and both he and Mr. Bianco allege that upon arrival at Newark, their destination on a September 1997 flight, they were stranded for approximately one-half hour aboard an aircraft while awaiting a boarding chair in violation of section 382.39(a)(l).
8. Mr. Kelly (Dkt. **OST** 98-4504) alleges that, on a flight from Newark to Las Vegas on September 11, 1998, Continental refused to stow his wheelchair in the passenger compartment on the aircraft in violation of section 382.41(e), and instead placed it in the cargo hold.

9. True and correct copies of the three complaints (without attachments) are attached as Appendices A, B, and C.
10. In addition, the Office of Aviation Enforcement and Proceedings has obtained partial records of informal complaints and lists of complaints received by Continental itself which reflect a number of violations of Part 382 during the period January 1997 to March 1998. These incidents **include** 13 instances of strandings of disabled passengers aboard aircraft or in terminal areas in violation of sections 382.39 (a)(l) and 382.39 (a)(3); approximately 100 instances of alleged negligent handling of passengers in wheelchairs or failure to provide wheelchair service promptly, also in violation of sections 382.39 (a)(l) and 382.39 (a)(3); and 9 instances of **failure** to provide a dispositive response to written complaints as required by section 382.65 (b)(3).
11. By engaging in certain of the conduct alleged in the three formal complaints referenced in this complaint, and described in paragraphs 4, 5 and 6 *supra*, and by engaging in the conduct described in paragraph 8 *supra*, Continental has violated the requirements of 14 CFR Part 382 on more than 125 occasions.¹
12. The majority of the violations discussed in paragraph 11, *supra*, occurred in interstate air transportation, but a number involved foreign air transportation.

¹ The formal complaints of Mr. Soni, Messrs. Bianco and Tobin, and Mr. Kelly include several allegations which we have decided not to pursue in this case. **Certain of their factual claims, accepted on their face, do not supply even a prima facie basis for alleging a violation of any provision of 14 CFR Part 382 or the other provisions at issue here. For this reason, we have not included in this complaint allegations related to violations of 14 CFR 382.45, which requires that carriers maintain a system that allows them to provide information to disabled travelers on the availability of seats with moveable armrests. No factual assertion in any of the three complaints indicates a violation of this provision. Allegations that Continental's training program was not adequate, in violation of 14 CFR 382.61, were similarly unsubstantiated by the complaints themselves or our investigation, and have therefore been omitted from this complaint. In addition, we have not alleged violations of Part 382 or 49 U.S.C. § 41705 on the sole basis of physical injuries which the complainants claim to have suffered during transfers to and from wheelchairs and boarding chairs, or on the sole basis of cases alleging such physical injuries which came to light in the course of our informal investigation. Where the carrier's training program appears to be adequate and the occurrences of injuries are infrequent, as appears to be the case here, the fault in such instances, if any, appears to lie with the individual employees involved. As with other passenger injuries aboard aircraft, tort law would cover such situations, as would court claims for damages under the Air Carrier Access Act. Finally, the issues raised by Mr. Soni's complaint regarding a flight from Italy to the U.S. in October 1997 were resolved in Order 98-12-19, a consent cease and desist order issued against Alitalia.**

13. Each violation of the requirements of 14 CFR Part 382 referred to in paragraph 8 *supra* also constitutes a violation of the Air Carrier Access Act (49 U.S.C. § 41705).
14. To the extent that the violations described in paragraph 11 and 12 *supra* occurred in interstate air transportation, each such violation is also a violation of 49 U.S.C. § 41702 which requires that air carriers provide safe and adequate interstate air transportation.
15. To the extent that the violations described in paragraph 11 and 12 *supra* occurred in foreign air transportation, each such violation is also a violation of 49 U.S.C. § 41310 which prohibits unreasonable discrimination in foreign air transportation against any person.
16. Under 49 U.S.C. § 46301 and 14 CFR Part 383, the Department may assess civil penalties of up to \$1,100 for each violation of the Department's regulations (including 14 CFR Part **382**), rules or orders, or certain specified statutory provisions, including 49 U.S.C. § 41705, 49 U.S.C. § 41702, and 49 U.S.C. § 41310. For continuing violations, each day each violation continues constitutes a separate offense.
17. Under 49 U.S.C. § **46101(a)(4)**, the Department may order an air carrier to cease and desist from violating Department orders or rules, including 14 CFR Part 382, or certain statutory provisions, including 49 U.S.C. § **41705**, 49 U.S.C. § 41702, and 49 U.S.C. § 41310.

WHEREFORE, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings requests the Department of Transportation to:

- A. Find that Continental Airlines, **Inc.**, has violated 14 CFR Part 382 by:
 - (i) stranding wheelchair-dependent passengers aboard aircraft, or in terminal areas, and failing to provide prompt and proper wheelchair and boarding chair services in violation of section 382.39 (a)(1) and 382.39 (a)(3);
 - (ii) failing to store assistive devices in the cabin area, as required by 382.41 (e); and
 - (iii) failing to provide dispositive responses to written complaints as required by 382.65 (b)(3).

- B. Find that by engaging in the conduct described in paragraphs A(i), A(ii) and A(iii), *supra*, Continental Airlines, Inc., has violated 49 U.S.C. § 41705;
- C. Find that to the extent the violations described in paragraphs A and B, *supra*, occurred in interstate air transportation, that the conduct violated 49 U.S.C. § 41702; to the extent that the violations occurred in foreign air transportation, that the conduct violated 49 U.S.C. 41310.
- D. Order Continental Airlines and its successors and assigns to cease and desist from violating 14 CFR Part 382 and 49 U.S.C. § 41705, 49 U.S.C. § 41702, and 49 U.S.C. § 41310 by engaging in the conduct described in paragraphs A, B, and C, *supra*;
- E. Assess civil penalties against Continental of \$250,000 for the violations described in paragraphs A and B above; and \$1,100 for each additional similar violation revealed in the course of this investigation;
- F. Grant such other relief as may be appropriate.



Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings



Nicholas Lowry
Trial Attorney
Office of Aviation Enforcement and
Proceedings (C-70)
(202)366-9351

August 16, 1999

Attachments: (Appendices A, B, and C)

UNITED STATES
DEPARTMENT OF TRANSPORTATION

FRANZ SONI,

Complainant,

- against -

CONTINENTAL AIRLINES, INC.,

Respondent.

: 49 U.S.C. 41705

: Air Carrier Access Act of 1986

: VERIFIED COMPLAINT

-04114

FRANZ SONI, (hereinafter "Complainant") is being represented by **Kleo J. King**, Program Counsel for the Eastern Paralyzed Veterans Association, **75-20** Astoria Boulevard, Jackson Heights, New York **11370- 1177**. All **future** documents may be served on Ms. King at the above address or she may be contacted by telephone at (718) **803-3782**.

The Complainant is a paralyzed veteran who uses a wheelchair for mobility and, is therefore, a person with a disability as **defined** in the Air Carrier Access Act of 1986 (ACAA), as amended, 49 U.S.C. **§41705**, and the implementing regulations, 14 C.F.R. **§382.5**, as well as a member and a board member of the Eastern Paralyzed Veterans Association. Furthermore, the Complainant is a "qualified individual" as defined in the regulations, 14 C.F.R. **§382.5**, since he possessed a valid ticket for each of the **flights** described herein.

The Complainant charges the above named Respondent, Continental Airlines, Inc., headquartered in Houston, Texas, with unlawful discrimination against an otherwise qualified individual with disabilities, by reasons of such disabilities, in the provision of air transportation pursuant to 49 U.S.C. 541705. The Complainant also charges that the enforcement of the **ACAA** is in the public interest and in this instance warrants the commencement of a formal enforcement proceeding by the Assistant General Counsel of Aviation Enforcement and Proceedings pursuant to 14 C.F.R. **§302.206**.

The Complainant alleges that it is the practice of the Respondent and the Respondent's employees to discriminate against people with disabilities by failing to establish an effective system which will ensure that persons with disabilities can obtain seats with movable aisle

armrests in aircraft so equipped in violation of 14 C.F.R. §382.45(a)(1) and Order 94-12-39 issued by the United State Department of Transportation on December 28, 1994.

The Complainant also alleges that it is the practice of the Respondent and the Respondent's employees to discriminate against people with disabilities by failing to provide boarding wheelchairs in a timely manner so that the Complainant may avail himself to pre-boarding services and/or is able to board his flight before the aircraft departs from the gate in violation of 14 C.F.R. §382.39(a)(1).

The Complainant also alleges that it is the practice of the Respondent and the Respondent's employees to discriminate against people with disabilities by failing to allow Complainant to stow his wheelchair in the cabin when the Complainant takes advantage of the Respondent's pre-boarding process in violation of 14 C.F.R. §382.41 (e)(2).

The Complainant further alleges that it is the practice of the Respondent to discriminate against people with disabilities by failing to adequately train its employees on the proper and safe operation of any and all equipment used to accommodate passengers with disabilities, including the boarding wheelchair, in violation of 14 C.F.R. §382.61.

The Complainant finally alleges that it is the practice of the Respondent to discriminate against people with disabilities by failing to ensure that contractors with whom it contracts provide accessible, nondiscriminatory services to its passengers with disabilities in violation of 14 C.F.R. §382.9(a).

The particulars are as follows:

(1) On August 2, 1997, Complainant departed from Newark International Airport on flight 521 to Tampa. Upon his arrival at Newark International Airport two hours before take-off, Complainant informed the gate agent that he would need to pre-board via the use of the boarding wheelchair. When pre-boarding was announced, the boarding wheelchair was not at the gate. The gate agent continued to board the rest of the passengers. The boarding wheelchair was then brought to the gate, and Complainant was boarded while the rest of the passengers watched. The Complainant requested that his wheelchair be stored in the cabin, but he was told that there was not a closet on this size aircraft (MD80).

(2) On August 5, 1997, Complainant departed from Tampa International **Airport on** Continental flight **450** to Newark. Complainant requested a window seat in a row with a movable aisle armrest for easy transfer. Complainant was not assigned such a seat. Upon Complainant's arrival at Newark, he was lifted **from** his airline seat to the boarding wheelchair by an individual who was not properly instructed on how to transfer a passenger with a mobility impairment. Complainant attempted to instruct the individual on how to lift and transfer him, but was ignored. Complainant's buttock was bumped on the aisle armrest during transfer causing a bruised area.

(3) On August 6, 1997, Complainant wrote to Gordon Bethune at Continental Airlines complaining about his treatment on the August **2nd** and **5th** flights (see Attachment I).

(4) On August 15, 1997, Jane Cox, Executive Assistant for Continental, wrote Complainant (see Attachment II).

(5) On November 7, 1997, **Kendra** McGee, **from** Continental Consumer Services, wrote Complainant asking for medical documentation for the injury incurred on August 5, 1997 (see Attachment III).

(6) On October **4, 1997**, Complainant was scheduled to depart from Milan, Italy, on **Continental/Alitalia** flight 640 to Newark. Complainant arrived at Milan Airport two hours and forty minutes before the flight was scheduled to depart and requested pre-boarding and use of a boarding chair. Complainant had requested a window seat and been assigned seat 29A. When pre-boarding began at **8:45**, Complainant was escorted to the aircraft (which was a Continental aircraft) but the boarding wheelchair was not there. Also, the gate agent informed Complainant that seat 29A was located in an emergency exit row. Mr. Bob **Patire**, a Continental flight attendant, assured Complainant that he would be assigned another seat. The rest of the passengers boarded the aircraft and the unassigned seats, including seat **29A**, were sold to stand-by passengers. Once boarding was completed, Complainant was informed that no seats were available and he would be **left** behind. The door to the **aircraft** was closed and the

aircraft pulled away **from** the gate. At this time, the boarding chair arrived. Complainant was told that he would be given a seat on the next flight to Newark which was scheduled to depart 6 hours later.

(7) On October 8, 1997, Complainant wrote a letter to Gordon Bethune, Chief Executive **Officer** for Continental, complaining about his treatment on October 4th (see Attachment IV).

(8) On October 29, 1997, Jane Cox from Continental Airlines, wrote Complainant apologizing for any inconvenience and stating that Part 382 of the Air Carrier Access Act regulations does not apply to Alitalia (see Attachment V). Ms. Cox did not address Continental's obligation to contract with entities that do not discriminate against persons with disabilities pursuant to Part **382.9(a)**.

(9) On November 6, 1997, Complainant received a letter **from** **Domenica** Cempella, Chief Executive Officer of Alitalia apologizing for his treatment at Fiumicino Airport in Milan on October 4, 1997, and stating that compensation had been offered by its partner, Continental Airlines (see Attachment VI).

(10) On November **9, 1997**, Complainant departed **from** Tampa International Airport on flight 123 to Newark. Complainant requested pre-boarding and was taken to the plane where the boarding chair was waiting, however, there was not enough **staff** to assist him into the aircraft. While Complainant waited for additional staff to arrive, other passengers began boarding the aircraft. The row he was assigned did not have an operational movable aisle armrest, so the flight attendant located a row with a movable aisle armrest where Complainant was able to transfer himself. Once the **aircraft** landed at Newark, the staff available to assist Complainant in deplaning was not trained on how to **lift** a person with a disability. The boarding chair was brought on backwards causing the Complainant to be lifted and his body turned in the narrow aisle. As a result of this improper transfer, Complainant bumped his back which resulted in a bruise.

(11) On November 13, 1997, Complainant wrote Gordon Bethune outlining the problems he incurred on November 9th, at both Tampa and Newark (see Attachment VII).

(12) On December 12, 1997, Complainant received a letter from Jane Cox apologizing for not meeting Complainants needs in the course of his trip on November 9th (see Attachment VIII).

WHEREFORE, The Complainant requests a declaration that the Air Carrier Access Act, 49 U.S.C. 541705, and its implementing regulations, 14 C.F.R. **Part 382**, require Continental Airlines, Inc., to establish a system to identify and assign to passengers **with** disabilities, seats with movable aisle armrests in aircraft so equipped; to provide boarding assistance to people with disabilities including adequate personnel to assist the individual and proper equipment such as boarding chairs; to allow passengers with disabilities who avail themselves to **pre-**boarding to stow their wheelchair on board the aircraft even when pre-boarding takes longer than necessary due to the airline's failure to provide proper equipment **and/or** personnel; to adequately train its personnel in the requirements of the law including effectively assisting passengers with disabilities; and to assure that all of the entities its contracts with, including foreign air carriers, do not discriminate against passengers with disabilities. Complainant **further** requests that the Department of Transportation institute a formal enforcement proceeding pursuant to 14 C.F.R. §302.206, and order Continental Airlines, Inc., (1) to create a system to identify seats with movable aisle armrests in aircraft so equipped and to assign such seats to passengers with disabilities pursuant to 14 C.F.R. **§382.45(a)(1)** and the Department of Transportation Order 94-12-39 issued on December 28, 1994; (2) to provide boarding assistance to passengers **with** disabilities including personnel trained in lifting and transferring such passengers as well as providing the equipment necessary to board such persons in a timely manner and in a manner that does not create a spectacle of such passengers or endanger the safety of such passengers pursuant to 14 C.F.R. **§382.39(a)(1)**; (3) to create a policy that when passengers with disabilities avail themselves to the pre-boarding process that the passengers manual wheelchair be given priority in the storage space in the aircraft regardless of any boarding delays caused by the airline, pursuant to 14 C.F.R. **§382.41(e)(2)**; (4) to adequately train its personnel to appropriately respond to the needs of passengers with disabilities,

including the proper and safe operation of any and all equipment used to accommodate passengers with disabilities pursuant to 14 C.F.R. §382.61; and (5) to ensure that any and all entities Respondent contracts with, including ground service providers and foreign air carriers, do not discriminate against passengers with disabilities pursuant to 14 C.F.R. §382.9(a). Complainant also requests that the Department of Transportation impose civil and criminal penalties on the Respondent for its continued violation of the Air Carrier Access Act and the previously entered Order 94-12-39 requiring the assignment of seats with movable aisle armrest to passengers with disabilities as well as Respondent's continued failure to adequately train its personnel, provide proper boarding assistance and equipment, and to contract with entities that discriminate against people with disabilities; and grant other further relief it may deem just and proper.

DATED: Queens, New York

December 23, 1997

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

I, **FRANZ SONI**, Complainant, herein being duly sworn, depose and say:

That I have read the foregoing complaint and know the contents thereof.

That the same is true of my knowledge except as to the matters therein stated on information and belief, and that as to those matters, I believe the same to be true.


FRANZ SONI
15 Arundel Road
Pompton Plains, New Jersey 07444

Subscribed and sworn to before me
this **23rd** day of December, 1997.

Kleo J. King
 NOTARY PUBLIC
KLEO J. KING
 Notary Public, State of New York
 No. 4953148
 Qualified in Suffolk County
 Commission Expires July 3, 1999

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

DEPT. OF TRANSPORTATION
DOCS SECTION

98 MAR 13 PM 2:22

PAUL, TOBIN and ANGELO BIANCO,

Complainants,

- against -

CONTINENTAL AIRLINES, INC..

Respondents.

: 49 U.S.C. 41705
: Air Carrier Access Act of 1986
: VERIFIED COMPLAINT
: *CST-98-3623-1*
:
:
:
:
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PAUL TOBIN and ANGELO BIANCO, (hereinafter "Complainants") are being represented by John P. Herrion, Assistant Program Counsel for the Eastern Paralyzed Veterans Association, 75-20 Astoria Boulevard, Jackson Heights, Nw York 11370-1 177. All future documents may be served on Mr. Herrion at the above address or he may be contacted by telephone at (718) 803-3782.

The Complainants are paralyzed veterans who use wheelchairs for mobility and, are therefore, persons with disabilities as defined in the Air Carrier Access Act of 1986 (ACAA), as amended, 49 U.S.C. §41705, and the implementing regulations, 14 C.F.R. §382.5, as well as members of the Eastern Paralyzed Veterans Association. Furthermore, the Complainants are "qualified individuals" as defined in the regulations, 14 C.F.R. §382.5, since they possessed valid tickets for the flights described herein.

The Complainants charge the above named Respondent, Continental Airlines, Inc., headquartered in Houston, Texas, with unlawful discrimination against otherwise qualified individuals with disabilities, by reasons of such disabilities, in the provision of air transportation pursuant to 49 U.S.C. §41705. The Complainants also charge that the enforcement of the ACAA is in the public interest and in this instance warrants the commencement of a formal enforcement proceeding by the Assistant General Counsel of Aviation Enforcement and Proceedings pursuant to 14 C.F.R. §302.206.

The Complainants allege that the Respondent and the Respondent's employees discriminate against people with disabilities by failing to assist the Complainants in deplaning in a safe and timely manner in violation of 14 C.F.R. §382.39 (a)(1).

The Complainants also allege that it is the practice of the Respondent to discriminate against people with disabilities by failing to adequately train its employees on the proper and safe method of transferring passengers with disabilities, including the transfer from the airline seat to the boarding wheelchair, in violation of 14 C.F.R. §382.61.

The Complainants finally allege that it is the practice of the Respondent to discriminate against people with disabilities by failing to ensure that contractors with whom it contracts train their employees in assisting passengers with disabilities in violation of 14 C.F.R. §382.61(a)(6).

The particulars are as follows:

- (1) On February 25, 1998, Complainants departed from Newark International Airport on flight 303 to Washington, DC (see Attachment I). Upon arrival at National Airport in Washington, DC, Complainant, Paul Tobin, was transferred from his airline seat to the aisle chair improperly. Mr. Tobin's left hip was hit on the armrest. When Mr. Tobin complained to airline personnel, he was presented with a travel voucher.
 - (2) On February 27, 1998, Complainants departed from National Airport in Washington, DC on Continental flight 310 to New York. Upon Complainants' arrival at Newark, all passengers and flight crew left the aircraft. Complainants waited approximately fifteen minutes until a new flight crew boarded the aircraft. When the Complainants realized that an aisle chair and attendants were not coming to assist them to deplane, they asked the cleaning crew to get the attention of the new flight crew, who informed them that they believed the Complainants were flying onto the next designation. At this point Complainants requested to speak with the Gate Supervisor. After approximately eight minutes two individuals arrived with the aisle chair.
 - (3) After the Complainants were deplaned, they requested to speak with the Customer Service Representative. While speaking with her, the Customer Service Manager, Icema, came over and authorized that the Complainants be given travel vouchers.
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WHEREFORE, **The** Complainants **request a declaration** that **the Air Carrier Access Act**, 49 U.S.C. **§41705**, and its implementing regulations, 14 C.F.R. **Part 382**, **require Continental Airlines, Inc.**, to provide boarding assistance to people **with** disabilities including **adequate** personnel to assist such individuals and **proper** equipment **such** as boarding chairs; to adequately train its **personnel** in the **requirements** of the law including **effectively assisting passengers** with disabilities; and to assure that all of the entities it contracts with do not **discriminate** against **passengers with** disabilities. Complainants **further request that the** Department of Transportation **institute** a formal enforcement proceeding **pursuant to** 14 C.F.R. §302.206, and order **Continental Airlines, Inc.**, (1) to provide boarding assistance to **passengers with disabilities** including personnel trained in lifting and transferring such passengers as well **as** providing **the equipment** necessary to board such **persons** in a **timely** manner **and in a** manner that does not create a **spectacle** of such **passengers** or endanger **the** safety of such **passengers pursuant to** 14 C.F.R. **§382.39(a)(1)**; (2) to **adequately train its personnel to** appropriately respond to the **needs of passengers with disabilities, including the proper and safe method** of transferring **passengers with disabilities pursuant to** 14 C.F.R. §382.61; and (3) to **ensure that any and all entities Respondent contracts with, including ground service providers, do not discriminate against passengers with disabilities pursuant to** 14 C.F.R. **§382.9(a)** and are **adequately trained pursuant to** 14 C.F.R. **§382.61(a)(6)**. Complainants also request that **the** Department of Transportation **impose** civil **penalties** on the **Respondent** for its Continued violation of the Air Carrier Access Act with respect to Respondent's continued failure to **adequately** train its **personnel**, and provide proper boarding **assistance**; and grant **other** further relief it may **deem** just and **proper**.

Dated: Queens, New York

March 12, 1998

4.

VERIFICATION

STATE OF NEW YORK)

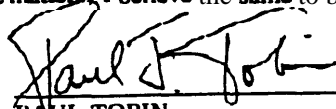
) ss.:

COUNTY OF QUEENS)

I, **PAUL TOBIN**, one of the Complainants, herein **being duly** sworn, depose and say:

That I have **read the** foregoing complaint and **know the** contents thereof.

That the same is true of my knowledge except as to the matters therein stated on information and belief, and that as to those matters, I believe the same to be true.



PAUL TOBIN

Subscribed and sworn to before me

This 12th day of March, 1998.


NOTARY PUBLIC

LAWRENCE E. SHEPETOFSKY
Notary Public, State of New York
No. 01375017239
Qualified in Richmond County
My Commission Expires August 30, 1999

43800
UNITED STATES
DEPARTMENT OF TRANSPORTATION

GERARD M. KELLY,

Complainant,

- against -

CONTINENTAL AIRLINES, INC.

Respondents.

DEPARTMENT OF TRANSPORTATION

98SEP25PM 2: 27

: 49 U.S.C. 41705
: DOCKET SECTION
: Air Carrier Access Act of 1986

: VERIFIED COMPLAINT

: 057-98-4504-1

4504

GERARD M. KELLY, (**hereinafter "Complainant"**) is being represented by **John P. Herrion**, Assistant Program **Counsel** for the Eastern Paralyzed Veterans **Association**, 75-20 Astoria Boulevard, Jackson Heights, New York 11370-1177. All **future** documents may be served on Mr. **Herrion** at the above address or he may be contacted by telephone at (718) 803-3782.

The Complainant is a paralyzed veteran **who** uses a **wheelchair** to ambulate and, is therefore, a person with a disability as defined in the Air Carrier Access Act of 1986 (**ACAA**), as amended, 49 U.S.C. **§41705**, and the implementing regulations, 14 C.F.R. **§382.5**, as well as the Deputy Executive Director of the Eastern Paralyzed Veterans Association. Furthermore, **the** Complainant is a "qualified individual" as defined in the **regulations**, 14 C.F.R. **§382.5**, since he possessed a valid ticket for **the flight** described herein

The Complainant charges the above named Respondent, Continental Airlines, Inc., headquartered in Houston, Texas, with unlawful discrimination against otherwise qualified individuals **with** disabilities, by reasons of such disabilities, in the provision of air **transportation** pursuant to 49 U.S.C. 941705. **The** Complainants also **charge** that the enforcement of **the ACAA** is in **the** public interest and in **this** instance **warrants** the **commencement** of a formal **enforcement** proceeding by **the** Assistant General **Counsel** of Aviation Enforcement and Proceedings pursuant to 14 C.F.R. **§302.206**.

The Complainant alleges that the Respondent and the Respondent's employees discriminate against people with disabilities by **refusing** to stow Complainants wheelchair in the designated area, in violation of 14 C.F.R. §382.41(e)(2).

The Complainant also alleges that it is the practice of the Respondent to discriminate against people with disabilities by failing to adequately educate its employees with regard to the stowage of personal equipment, mobility aids and **assistive** devices.

The particulars are as follows:

- (1) On September 11, 1998, Complainant departed **from** Newark **International** Airport on flight **#1679** to Las Vegas, Nevada (**see** Attachment I). Complainant **pre-boarded the aircraft**, as required by **ACAA regulations**, in order to stow his wheelchair in the designated storage area.
 - (2) Upon boarding the **aircraft**, Complainant **requested** that the flight attendant store his folding wheelchair in the designated storage area Complainant is afforded priority in stowing his wheelchair, as provided in 14 C.F.R §382.41(e)(2).
 - (3) The flight attendant told Complainant that the space was not large enough to store his wheelchair, when in fact, there was ample **space**.
 - (4) The flight attendant disregarded the implementing regulations of the **ACAA**, and denied Complainant priority in **stowing his wheelchair**.
 - (5) Due to said violation of the ACAA, Complainant was forced to stow his wheelchair in the **cargo** compartment of the **aircraft** when in fact, ample storage area was available in the cabin.
 - (6) When Complainant returned to Newark on flight **#1678** (see Attachment II), he again **pre-boarded** and requested that his wheelchair be stored in the designated space in the cabin. The flight attendant **informed** Complainant that based on **her** experience, there would be no problem in storing his wheelchair in the designated closet.
 - (7) On both flights, Complainant boarded a 757 **aircraft**, which allows enough space to stow a folding wheelchair in the cabin **closet**.
 - (8) Respondents refusal to accommodate Complainant on **flight #1679 from** Newark to Las Vegas violated the ACAA and its implementing **regulations**.
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WHEREFORE, The Complainant requests a declaration that the Air Carrier Access Act, 49 U.S.C. **§41705**, and its implementing regulations, 14 C.F.R Part 382, **require Continental Airlines, Inc.**, to provide priority in storing personal items, mobility aids, and **assistive** devices to people with disabilities; to adequately train and educate its personnel in the requirements of **the** law including **effectively** assisting passengers with disabilities. Complainant further requests that the Department of Transportation institute a formal enforcement proceeding **pursuant** to 14 **C.F.R.** §302.206, and order Continental Airlines, Inc., (1) to provide priority in storing personal items, mobility aids, and **assistive** devices to people with disabilities; to adequately train and educate its personnel in the **requirements** of the law including effectively assisting passengers with disabilities.

Complainants also request that the Department of Transportation **impose** civil penalties on **the** Respondent for its continued violation of the Air Carrier **Access Act with respect to Respondent's** continued failure to adequately train its **personnel**, and **failure** to give priority to people **with** disabilities in storing personal items, mobility aids, and assistive devices.

Dated: Queens, New York

September **24, 1998**

VERIFICATION

STATE OF NEW YORK)

) ss.:

COUNTY OF QUEENS)

I, **GERARD** M. KELLY, the Complainant herein, being **duly** sworn, deposes and says:

That I have read the foregoing complaint and know the contents thereof.

That the same is true of my knowledge except as to the matters therein stated on information and belief, and that as to those matters, I believe the same to **be** true.


GERARD M. KELLY

Subscribed and sworn to before me
This 24th day of September, 1998.


NOTARY PUBLIC

...
LAWRENCE E. SHEPETOFSKY
Notary Public, State of New York
No. 01345017290
Qualified in Richmond County
My Commission Expires August 30, 1999

UNITED STATES
DEPARTMENT OF TRANSPORTATION

GERARD M. KELLY.

Complainant,

• against •

CONTINENTAL AIRLINES, INC.

Respondents.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, JOHN P. **HERRION**, being **duly sworn**, depose and say:

That I am over the age of eighteen years and am not a party to the above entitled **action**.

That on September **24, 1998**, I **served** the annexed **Complaint** on the following party:

Carson S. **Trapnell**, Esq.
Senior Attorney
Continental Airlines, Inc.
2929 Allen Parkway, Suite 1466
Houston, Texas 770 19

by depositing a copy of the said Complaint, properly enclosed in a postpaid wrapper, in a post office box regularly **maintained** by the Government of the United States, in the County of Queens, City and State of New York, addressed to the aforementioned **address**.



JOHN P. HERRION

Subscribed and sworn to before **me**
this 24th day of **September**, 1998.



NOTARY PUBLIC

LAWRENCE E. SHEPETOFSKY
Notary Public, State of New York
No. 013145017280
Qualified in Richmond County
My Commission Expires August 30, 199 **9**